Ramlan bin Kamal v Perbadanan Nasional Bhd

HIGH COURT (SHAH ALAM) — APPEAL NO MT1–12–165 OF 2002
SURIYADI J
8 DECEMBER 2003

Civil Procedure — Judgment — Default judgment — Setting aside — Delay in making application to set aside — Judgment in default obtained notwithstanding defective service of summons — Whether delay in making application of any consequence — Whether delay a mere procedural matter

Civil Procedure — Service — Service of documents — Whether service at defendant's place of employment constituted service at defendant's last known address — Whether such service defective — Subordinate Court Rules 1980, O 7 r 1(1)

Words & phrases — 'Last known address' — Subordinate Court Rules 1980, O 7 r 1(1)

The appellant was one of two guarantors to a supplemental agreement ('the agreement') between the respondent and one Mohd Idrus bin Ismail ('Mohd Idrus'). Due to a breach of the agreement by Mohd Idrus, a suit was brought by the respondent against Mohd Idrus and both guarantors. A summons and statement of claim was filed on 3 December 1990. On 5 April 1991 a judgment in default ('JID') was entered against the appellant for the sum of RM50,654.18. However the JID and a demand for the payment of the judgment sum was served upon the appellant only on 9 March 1999. Within 40 days of receiving the JID, the appellant applied to set it aside on the basis that he was not served with the summons and statement of claim. It transpired that the summons and statement of claim were served at the appellant's employer's address. The appellant's application was however dismissed by the subordinate court and thus the appellant appealed. The appeal centred on whether service of the summons and statement of claim at the appellant's employer's address constituted service upon the appellant at his 'last known address'.

Held, allowing the appellant's appeal with costs:

(1) The delay of some ten days by the appellant in making the application to set aside the JID, bearing in mind that any setting aside application should be undertaken within 30 days after receipt of the judgment as per O 29 r 14 Subordinate Courts Rules 1980 ('SCR') should not be made too much of an issue as this was a mere procedural matter. It could not have prejudiced the respondent as it was not without fault either. The JID was obtained in 1991 but merely served in 1999. It is also established that a court has discretion to set aside a default judgment obtained not on merits or consent, but on a failure to follow some rule of procedure. Where a judgment is obtained in default of appearance, on the basis of an alleged successful good service of the writ, but which in reality never was, no amount of delay on the part of the aggrieved applicant should be permitted to be exploited by the respondent to legalize an order that was defective at the outset (see paras 4 and 5).

(2) The word 'address' must incline only towards the place of abode or residence. However this definition must only be confined to the issue of service to an individual and no more. The word 'last' on the other hand means 'latest, ultimate, final and most recent'. The last place of abode would include a place of residence that had been rented out for a sum of money to the defendant, or let out for free or living together with his parents, or even personally owned. On a construction of O 7 r 1(1) of the SCR, when a summons is posted to the defendant's place of employment, on the premise that it is the 'last known address' then such a service is bad. The phrase 'last known address' means *the most recent known residence* of the defendant and nowhere else. However a plaintiff is not to be denied the right to subsequently submit a substituted service application, praying that the summons be pasted in some spot at the defendant's place of work. A summons may also personally be served on the defendant at his place of employment, at any hour if the situation permits (see paras 22,23, 25 and 26).

(3) On the facts, although the summons was indeed sent out by prepaid registered post, with the AR card not being a statutory requirement then, the failure of the plaintiff to send it to the appellant's last known address, ie his most recent known residence, made that service defective. Thus the appeal should be allowed with costs and the subordinate court's order set aside (see paras 27 and 29).

[**Bahasa Malaysia summary**

Perayu merupakan salah satu daripada dua penjamin kepada perjanjian tambahan ('perjanjian itu') di antara responden dan Mohd Idrus bin Ismail ('Mohd Idrus'). Oleh kerana satu perlanggaran perjanjian oleh Mohd Idrus telah berlaku, satu guaman telah dimulakan terhadap Mohd Idrus dan kedua-dua penjamin itu. Satu saman dan penyata tuntutan telah difailkan pada 3Disember 1990. Pada 5 April 1991, satu penghakiman ingkar ('PI') telah dimasukkan terhadap perayu untuk satu jumlah RM50,654.18. Walau bagaimanapun, PI itu dan tuntutan untuk bayaran jumlah penghakiman itu hanya disampaikan ke atas perayu pada 9 Mac 1999. 40 hari selepas menerima PI itu, perayu telah memohon untuk mengenepikannya pada dasar bahawa beliau tidak disampaikan dengan saman dan penyata tuntutan. Saman dan penyata tuntutan itu telah disampaikan ke tempat kerja perayu. Permohonan perayu telah ditolak oleh mahkamah rendah dan perayu merayu. Rayuan itu adalah mengenai sama ada penyampaian saman dan penyata tuntutan ketempat kerja perayu merupakan penyampaian ke atas perayu di 'last known address'.

Diputuskan, membenarkan rayuan perayu dengan kos:

(1) Kelewatan selama sepuluh hari oleh perayu di dalam membuat permohonan untuk mengenepikan PI itu, memandangkan permohonan untuk mengenepikan patut dibuat dalam jangka masa 30 hari setelah menerima penghakiman, seperti di dalam A 29 k 14 Keadah-Kaedah Mahkamah Rendah 1980 ('KMR'), bukan isu yang besar kerana ia

adalah perkara prosedur. Ia tidak akan memprejudiskan responden kerana responden juga bertanggungjawab. PI itu telah didapatkan pada 1991 tetapi hanya disampaikan pada 1999. Ia juga telah ditunjukkan bahawa mahkamah mempunyai budi bicara untuk mengenepikan penghakiman ingkar yang telah didapati bukan pada merit-merit ataupun melalui persetujuan, tetapi pada kegagalan untuk mematuhi keadah-kaedah prosedur. Di mana penghakiman didapatkan oleh kerana ingkar kehadiran, pada dasar penyampaian yang sempurna, tetapi yang sebenarnya tidak sempurna, kelewatan bagaimanapun oleh pemohon yang terkilan tidak patut dieksploitasikan oleh responden untuk membenarkan disisi undang-undang perintah yang cacat pada permulaan (lihat perenggan-perenggan 4 dan 5).

(2) Perkataan 'address' mesti lebih bermakna tempat kediaman. Walau bagaimanapun tafsiran ini mesti dihadkan kepada isu penyampaian kepada seseorang individu sahaja. Perkataan 'last' pula membawa maksud 'latest, untimate, final and most recent'. Tempat kediaman terakhir juga termasuk tempat yang disewa kepada defendan, atau disewa secara percuma ataupun hidup bersama ibu bapanya, atau kepunyaannya. Pada tafsiran A 7 k 1(1) KMR, apabila saman dihantar ke tempat kerja defendan, berdasarkan premis bahawa ia adalah 'last known address' penyampaian itu tidak sempurna. Frasa 'last known address' bermakna tempat kediaman terbaru defendan. Walau bagaimanapun, plaintif patut dibenarkan hak untuk memfailkan permohonan untuk penyampaian ganti, memohon saman itu dilekatkan pada suatu tempat di tempat kerja defendan. Saman juga dapat disampaikan secara ke diri ke atas defendan di tempat kerjanya, pada bila-bila masa jika boleh (lihat perenggan-perenggan 22, 23, 25 dan 26).

(3) Pada fakta-fakta, walaupun saman itu dihantar melalui pos berdaftar prabayar, kad AR masih belum menjadi peruntukkan undang-undang, kegagalan plaintif untuk menghantarkannya kepada alamat tempat kediaman terakhir perayu, iaitu alamat terbarunya menjadikan penyampaian itu cacat. Rayuan ini patut dibenarkan dengan kos dan perintah mahkamah rendah diketepikan (lihat perenggan-perenggan 27 dan 29).]

Notes

For cases on default judgments, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3192–3224.

For cases on service of documents, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5310–5317.

Cases referred to

Austin Rover Group Ltd v Crouch Butler Savage Associates (a firm) and others [1986] 3 All ER 50 (refd)

Chinese Tin Mines Rehabilitation Loans Board, The v Chee Hoi Voon [1959] MLJ 152 (refd)

Director of Public Prosecutions v Head [1959] AC 83 (refd)
Evans v Bartlam [1937] AC 473 (refd)
Fira Development Sdn Bhd v Goldwin Sdn Bhd [1989] 1 MLJ 40; Atwood v Chichester [1878] 3 QBD 722 (refd)
Forward v West Sussex County Council and others [1995] 4 All ER 207 (refd)
Goggs v Huntingtower (1884) 12 M&W 503 (refd)
Harkness v Bell's Asbestos & Engineering Ltd [1967] 2 QB 729 (refd)
Heath v White (1884) 2 Dow & L 40 (refd)
Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd [1998] 2 MLU 440 (refd)
MBf Finance Berhad v Chew Liong Gak [1993] 1 AMR Supp Rep 19 (refd)
Marsden and another v Kingswell Watts (a firm) [1992] 2 All ER 239 (refd)
PT Pelajaran Nasional Indonesia v Joo Seang & Co Ltd [1958] 24 MLJ 113 (refd)
Pengkalen Concrete Sdn Bhd v Chow Mooi (Guarantor of Kin Hup Seng Construction Sdn Bhd) & Anor [2003] 3 MLJ 67 (refd)
Queen, The v Webb and others [1896] 1 QB 487 (refd)
Robertson v Banham [1997] 1 WLR 446 (refd)
Taman Pangkor Sdn Bhd v Doric Development Sdn Bhd & Ors [1987] 2 CLJ 266 (refd)
White v Weston [1968] 2 All ER 842 (refd)

Legislation referred to

Interpretation Act 1889 [UK] s 26
Rules of the Supreme Court [UK] O 8 r 8, O 10 r 1(2)(a)
Subordinate Court Rules 1980 O 3 r 5, O 7 rr 1(1), 8, 9, 10, 15(2)(c), (d), (3), O 9 r 14, O 10 rr 1, 3, O 29 r 14

Haris Ibrahim (Haris & Co) for the appellant.
Anita Sockalingam (Zain & Co) for the respondent.

Suriyadi J:

[1] A scholarship had been conferred by Perbadanan Nasional Bhd to a student ie one Mohd Idrus bin Ismail, and in the event of a breach of that scholarship contract, the latter was to refund RM50,654.18 to the respondent. Regretfully a breach had occurred resulting in the refund clause being triggered. After some negotiation, another agreement dated 11 April 1990 was executed ('the supplemental agreement'), with that latter contractual sum being reduced to RM37,991.

[2] As provided for under cl 2 of the supplemental agreement, in the event there was default in the payment, the concession would be withdrawn and matters would revert to square one, whereupon that Mohd Idrus bin Ismail was required to refund the above full sum of RM50,654.18. As gauged from the supplemental agreement, Ramlan bin Kamal and one Mohd Fawzi bin Hussin, had stood as the guarantors. Regretfully, Mohd Idrus bin Ismail had failed to fulfill his part of the bargain per the supplemental agreement, resulting in Perbadanan Nasional Bhd filing a suit against all three, with Mohd Idrus bin Ismail as the first defendant, Ramlan bin Kamal and MohdFawzi bin Hussin being the guarantors, respectively the second and

third defendants. The summons and the statement of claim were filed on 3December 1990. For some reason, which need not be detailed out in this judgment, with the claims against the first and third defendants being of no consequence to this appeal, only the second defendant's predicament will be discussed here.

[3] It transpired that a judgment in default in the sum of RM50,654.18 had been successfully obtained against the second defendant ('the appellant') on 5 April 1991. The first inkling of the existence of this default judgment surfaced when the appellant received a letter dated 9 March 1999, from the solicitor of the respondent. Attached to that covering letter was the court order of judgment in default and demand for payment. Within a period of about 40 days after receiving those documents, the appellant filed an application to set aside the judgment in default order, on the premise that the summons and statement of claim ('the documents'), were never served on him. Unfortunately the application was rejected by the subordinate court, resulting in a notice of appeal being filed against that decision, and hence this appeal.

[4] The delay of ten days after receipt of the court order, bearing in mind that any setting aside application should be undertaken within 30 days after receipt of the judgment order as per O 29 r 14 of the Subordinate Court Rules 1980, should not be made too much of an issue as this is a mere procedural matter. It certainly could not have prejudiced the interest of the respondent, as it was not without fault either in the context of this case, especially when that default order was obtained in 1991 but merely served in 1999. Founded on my absolute discretion I certainly could enlarge time, and if necessary enforcing certain terms, and ordering the case to be heard on the merits (O 3 r 5 Subordinate Court Rules 1980*; The Chinese Tin Mines Rehabilitation Loans Board v Chee Hoi Voon* [1959] MLJ 152*; Fira Development Sdn Bhd v Goldwin Sdn Bhd [1989] 1 MLJ 40; Atwood v Chichester* [1878] 3QBD 722*)*.

[5] It is established law now that, a court of law has a discretion to set aside a default judgment obtained not based on merits or consent, but by a failure to follow some rule of procedure (*Evans v Bartlam* [1937] AC 473). Without mincing my words, in the event I were to discover some fundamental defect, which made the judgment in default order undeserving, no amount of excuse let alone a slight delay should be entertained, that could deny justice in the real sense. Without prejudging matters, if a judgment in default were to be obtained in default of appearance, on the basis of an alleged successful good service of the writ, but which in reality never was, no amount of delay on the part of the aggrieved applicant should be permitted to be exploited by the respondent to legalize an order that was defective at the outset (*Taman Pangkor Sdn Bhd v Doric Development Sdn Bhd & Ors* [1987] 2 CLJ 266). At the other extreme end, there are also authorities which accept the stance that where an order is a nullity at the outset, the person whom the order purports to affect has the option of either ignoring it or proceeding to court to have it set aside (*Harkness v Bell's Asbestos & Engineering Ltd* [1967] 2 QB 729). Lord Denning in *Director of Public Prosecutions v Head* [1959] AC 83 also had occasion to opine:

> … for, if the original order was void, it would, in law, be a nullity. There would be no need for an order to quash it. It would be automatically be null and void without further ado … in the event of any reliance sought thereon the party affected is entitled to use the defect simply as a shield or defence without having taken any positive action of his own.

[6] For purposes of this case, the appellant had not taken the extreme course of ignoring the order, and highlighting the non-effect only when the respondent was in the process of executing the order, but taking the option of setting it aside at an early stage as per the obiter in *Harkness v Bell's Asbestos & Engineering Ltd*.

[7] The bottom line of the disaffection of the appellant was that, as the documents were served at the employer's premises, that service must be construed as bad. It must be clarified that both parties had agreed at the outset that how it was posted, whether by prepaid registered post as in the unamended order of the Subordinate Court Rules 1980, or was sent by prepaid acknowledgement returned (AR) registered post, were not points of contention. What was under scrutiny and necessitate deliberation was the meaning of 'last known address' in the relevant order. According to the appellant, the employer's premises certainly did not fall within the ambit of the words 'last known address' under O 7 r 1 of the Subordinate Court Rules 1980. As far as the respondent was concerned, there was good service if the summons had been served by prepaid registered post, and service had occurred at the last known address, in this case the defendant's place of employment.

[8] The relevant provision under discussion is O 7 r 1(1) of the Subordinate Court Rules 1980, and it reads:

> Subject to the provisions of any written law and these rules, a summons must be served personally on each defendant or by sending it by pre-paid *registered post* addressed to his last known address. (Emphasis added.)

[9] At the material time when the summons was served, the then provision read:

> Subject to the provisions of any written law and these rules, a summons must be served personally on each defendant or by sending it by prepaid *acknowledgement returned (AR)* registered post addressed to his last known address. (Emphasis added.)

[10] The ineffectual infraction between the two provisions must have persuaded both parties to wisely concentrate only on the issue of 'last known address', and not on irrelevant matters.

[11] Precedent-wise, it is universally known that some of the methods condescended to by parties, especially after there had been failure of personal service, have been varied and even at times quite bizarre eg throwing a writ into the defendant's garden (*Heath v White* (1884) 2 Dow & L 40) and even placing a copy of the writ in a basket put over the garden on a string (*Goggs v Huntingtower* (1884) 12 M&W 503), Admittedly if permitted by written law, a document could be left or sent by post at the proper address, or effected in a manner directed by court. For the latter a substituted service has been the norm.

[12] For reasons known to Parliament special provisions have been promulgated on particular categories of persons, in the like of:

(i) persons under disability (O 9 r 14);

(ii) service on corporations (O 7 rr 10 and 15(2)(d), (3));

(iii) service on partners (O 10 r 3; O 7 r 15(2)(c));

(iv) member of the armed forces (O 7 r 8);

(v) defendant already imprisoned (O 7 r 9); and

(vi) agent of overseas principal (O 7 r 9) (See *Malaysian Court Practice* MLJ 1999 p 122).

[13] These special provisions, endowing special treatment for different persons as regards service must be pursuant to some reason, though logic points to certainty of receipt of the relevant documents for purposes of alerting them of pending suits, being the main reason. It is the very foundation of the country's judicial system, and fundamental in the attainment of justice that when a person is being sued, he must know of that fact. How is he to have notice of an action, which could permanently prejudice his social and financial standing in his community, if not by the basic right of being served with the relevant summons or litigation documents? The right to be fully appraised of the action was succinctly put in the case of *Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd* [1998] 2 MLU 440 at p 448 when Gopal Sri Ram JCA opined:

> It is axiomatic that the object of service of process 'is to bring the proceedings to the notice of the person being served, and there must be reasonable probability this object will be achieved'. The procedure of 'constructive service' is unknown in English law and is equally inapplicable in the Federated Malay States …

[14] To delve further (as examples):

(i) for a member of the armed forces, service may be made on the commanding officer or adjutant of his unit, who thenceforth will transmit it to the defendant;

(ii) for a prisoner, service may be carried out on the officer in charge of the prison, who will subsequently transmit it to that prisoner;

(iii) as regards a body corporate, service may be carried out on certain statutory personalities. Where a solicitor for a company undertakes to accept service on behalf of a company that service is good; and/or

(iv) service may be done on an agent of an overseas principal.

[15] From the above illustrations, regardless of some of the documents not being served directly on the defendants (eg the soldier and the prisoner) such service is construed as personal service. Irrespective of the contradiction perceivable, what is relevant is that certainty of receipt of the documents is quite assured, that is if the ordinary course of events were to follow its normal course. Needless to say, that hypothetical soldier or prisoner defendant will not be denied the liberty of rebutting service of any document.

[16] Returning to the mainstream, I am hard pressed to accept the suggestion that any document let alone a summons, with some degree of certainty will reach the hands of any defendant, if it were to be posted to his place of employment. With the teeming employees intensely focused on their own scope of duty, as potential reasons to cause the defendant *not to receive* the summons rather than the opposite, where then is that certainty? With frowning secretaries, underpaid and overworked, manning their overflowing counters, expecting them to industriously hand over the summons to any defendant is a story made in heaven.

[17] What if the defendant had been on leave and was at home or vacationing overseas when the posted summons was delivered to his office? Further, one must bear in mind that service may be effected at any place and at any time of the day *and night*. With the acceptance of his place of employment as his last known address, and in the event much of his employment were to entail night duties, implying not being in the office when the summons arrives during daytime, the improbability of that document being promptly channeled to him, before the return date is extremely high. The list of probabilities or reasons for the defendant not to receive the summons on time, or not receiving it at all is endless in such a scenario.

[18] In support of their respective stance, parties had canvassed many cases, among them *Forward v West Sussex County Council and others* [1995] 4 All ER 207, *Austin Rover Group Ltd v Crouch Butler Savage Associates (afirm) and others* [1986] 3 All ER 50; *White v Weston* [1968] 2 All ER 842 and *Marsden and another v Kingswell Watts (a firm)* [1992] 2 All ER 239. All emanated from the Court of Appeal. With the exception of *Marsden and another v Kingswell Watts (a firm)*, the other three above-mentioned cases could be distinguished with that of the current one. In *Austin Rover Group Ltd v Crouch Butler Savage Associates (a firm) and others* the court had indeed deciphered the issue of last known address, but from the point of view of the plaintiff. That prognosis unfortunately for purposes of this case is not in point. *Forward v West Sussex County County Council and others* likewise had also accepted a similar view, in that last known address must be viewed from the perspective of the plaintiff, with a remedy available to the defendant to show that the copy writ never was delivered to his office. The defendant there had successfully established the improbability of delivery, as even though the writ was purportedly served under O 10 r 1(2)(a) of the Rules of the Supreme Court ('RSC') which made provisions for the proceedings to be served by sending a copy of the writ by ordinary first class post to his usual or last known address, he evinced that by the time the summons was posted he already had shifted house. Perhaps on the pretext of the presumption of receipt of the summons by the defendant having been satisfactorily rebutted, that that outcome came about. In *Pengkalen Concrete Sdn Bhd v Chow Mooi (Guarantor of Kin Hup Seng Construction Sdn Bhd) & Anor* [2003] 3 MLJ 67, I had occasion to accept service of a summons sent to the last known address of the defendant to be good, even though was received by one 'Yanti' (not the defendant). I had arrived at that decision despite the defendant's denial of having received it, as I was not convinced that the

presumption had been rebutted. Evidentially, the defendant there was still occupying that last known address when the summons was delivered, quite dissimilar to *Forward v West Sussex County Council* where factually he had abandoned the impugned premises years earlier. Furthermore all parties had agreed that the defendant never did receive the writ. In an oblique way, the outcome of *Forward v West Sussex County Council* had watered down the full rigour of *Austin Rover Group Ltd v Crouch Butler Savage Associates (a firm)* and others, as the point of view of the plaintiff took a back seat vis-a-vis the fundamental rights of the defendant to be notified.

[19] In *White v Weston* the Court of Appeal court had indeed held that the last known address there must be interpreted to be the defendant's place of residence. The reason behind the decision was crystal clear as the requirement that the summons must be posted to the place of residence was statute based. Quite similar to *Forward v West Sussex County Council*, the Court of Appeal had held that service there was defective as actual notice on the part of the defendant had not taken place, despite the ingredients of O 8 r 8 of the RSC and s 26 of the Interpretation Act 1889 having been fulfilled to the hilt by the plaintiff. Sachs LJ had commented that service was not good, if it was posted to an address which was not the abode, residence, or place of business of a defendant, *unless there was actual receipt of the relevant documents*. This view I believe would run foul of the requirements of O 10 r 1 of the Subordinate Court Rules 1980, let alone there being in existence a plethora of authorities in Malaysia, which does not make *actual and physical receipt* by a defendant of the posted summons, at the last known address to be a mandatory requirement. On that score based on all the distinguishing factors, I was not persuaded by any of them.

[20] *Marsden and another v Kingswell* on the other hand was in a class of its own as it was persuasive and applicable for purposes of the current case. In this case partners were being sued, with RSC Ord 81 r 3(1)(a) permitting service on a firm to be effected by service on one or more of the partners. Under Order 10 r 1, the relevant provision under discussion there, apart from permitting personal service, it could also be served *'by sending a copy of the writ by ordinary first-class post to the defendant at his usual or last known address'*. Leggatt LJ had opined that:

> In order to constitute service on a firm under Ord 81 r 3(1)(a) the service on a partner must be such as would constitute service on him under Ord 10 r 1 if he were a personal defendant. If service by post or by insertion through the letterbox is chosen it must be effected at 'his usual or *last known address*'. *In my judgment that means at the place where he lives or is last known to have lived. It does not mean at the address of the partnership*, otherwise O 81 r 3 would have been so worded as to allow for insertion of a copy writ through the letterbox 'at the principal place of business of the partnership within the jurisdiction'. The mode of service attempted was in my judgment therefore bad. (Emphasis added.)

[21] What finally swayed me, apart from the above practical impediments that could culminate in catastrophic repercussions for any defendant in the event the plaintiff's stance were to be accepted, was the enlightening definition of *address* found in *Legal Thesaurus* by William C Burton. The definition reads:

noim-abode, box number, domicile, dwelling place, habitation, headquarters, home, inhabitancy, *inscripto,* legal residence, *locus,* lodging, lodging place, lodgment, place of business, residence, seat, street number.

[22] Indisputably the above definition excludes any place of employment (as opposed to place of business). Scrutinizing the definition and after appreciating the author's view, compounded by the practical problems in an office let alone the views of the court in *Marsden and another v Kingswell*, I was convinced sufficiently that the word *address* must incline only towards place of abode or residence. If no restriction is imposed on the meaning of address, with a recalcitrant student having left no trace of his current address, there is thus nothing to prevent the ventilation of the preposterous argument that the last known address could also include the university or institution of learning of any student, as that would be his last known address.

[23] A word of caution must be given, in that bearing in mind the nature of the impugned poser, my conclusion is only limited to the specific problem of service to an individual and no more. This conclusion may not necessarily be applicable to eg personalities or entities of say body corporate, as the legal niceties and factors unique in them have not been taken into consideration. The practical differences between a personal defendant and an entity/person created by statute are too obvious for comfort. Suffice if I merely reproduce the remarks of Roch LJ in *Robertson v Banham* [1997] 1 WLR 446 at p 453, which reads:

> With the principle that the purpose of the rules is that the originating process should be brought to the attention of the defendant in mind, what is meant by 'his usual or last known address'? Is that phrase to be confined to residential addresses? Free of authority I have no doubt that it should not be so confined. First, examination of other parts of the rules such as Ord 6 r 5, makes it clear that where the draftsman of the rules wishes to confine the address to a party's place of residence he does so in express terms; and that the same is true where the draftsman intends to refer to a business address. Second, in the case of a professional person the address known to the erstwhile client who wishes to sue the professional person will be the address at which he practices his profession. A professional person may be careful to ensure that clients do not know his home address, not wishing to be troubled with work at his home and, in some cases, not wishing to be troubled or to have members of his family troubled by difficult clients at his home. As Connell J observed during argument, *if a professional man is being sued in his professional capacity, then his address last known to the plaintiff will inevitably be his business address. It will also be his usual address as a professional man*. (Emphasis added.)

[24] I now move on to the next issue ie the meaning of *last*. *Black's Dictionary* (6th Ed) at p 882 defines *last* as *latest, ultimate, final and most recent,* definitions that I find faultless. I also take solace from the case of *The Queen v Webb and others* [1896] 1 QB 487, where the facts revealed that ten days after the birth of an illegitimate child, a summons was left at the house where the alleged father had been residing. It was highlighted that he had left after the delivery of that unfortunate child and had gone to America, where he had no place of abode. The impugned provision in that case, as in the current case, had neither discriminated nor put a damper over the geographical jurisdiction where service was concerned. That being so, had the

defendant acquired a new place of abode in America, that new place of residence would have qualified as the last place of abode, invariably warranting service to be effected there. It was held by the court that as he had no place of abode in America, the house he had left in England thus qualified as his last place of abode, thus making the service untainted.

[25] It is my view that the last place of abode would include a place of residence that had been rented out for a sum of money to the defendant, or let out for free or living together with his parents, or even personally owned. Strengthened by all the above reasons, by no figment of the imagination or prognosis casual or otherwise, can *last known address* be interpreted to include a person's place of employment for purposes of an individual. Any accession to such an assertion for whatever reason, including mere strict adherence to the letters of the law, is certainly unacceptable. To exploit and take advantage of the vagueness of the phrase, and in the process cause the deprivation of the defendant's right to be heard, is certainly discordant to any justice system to say the least, as natural justice would have been jettisoned to the back seat.

[26] That being so, on the construction of O 7 r 1(1) of the Subordinate Court Rules 1980, when a summons is posted to the defendant's place of employment, on the premise that it is the *last known address* then such a service is bad. To sum it up, in the context of the latter impugned phrase, it means *the most recent known residence* of the defendant and nowhere else. It must be emphasized that the plaintiff is not denied the right to subsequently submit a substituted service application, praying that the summons be pasted in some notorious spot at that place of work. Needless to say, a summons may personally be served on the defendant at his place of employment too, night and day, and at any hour if the situation permits.

[27] As far as the court is concerned, procedural provisions promulgated by Parliament, which could infringe the fundamental rights of any defendant and cause extreme prejudice to him unless adhered to strictly, must be given the utmost attention. Strict compliance is a must. As in this case, where the correct place to which a summons must be delivered, so as to ensure notification of the pending proceedings cannot be compromised. Imagine the dire predicament the defendant would be in, if a detraction were permitted, and at the end of the day a bankruptcy suit could rear itself at his door step even though the initial processes were defective. One must bear in mind that even a whiff of a suit could prejudice a defendant's predicament in his community, what more of that hypothetical bankruptcy action. On reflection, why it was so inexplicably difficult to post the summons to the defendant's residential address, bearing in mind that this was a scholarship contract case where it would be the norm to supply the house address, was beyond me (*MBf Finance Berhad v Chew Liong Gak* [1993] 1 AMR Supp Rep 19). To wind up the matter, despite being satisfied that the summons was indeed sent out by prepaid registered post (with the AR card not being a statutory requirement then), the failure of the plaintiff to send it to the defendant's last known address, ie his most recent known residence made that service defective.

[28] The opinion of Rigby J is also highly pertinent as regards the eventual outcome of this case when in *PT Pelajaran Nasional Indonesia v Joo Seang & Co Ltd* [1958] 24 MLJ 113 at pp 115–116, his Lordship had remarked:

> … where the law provides a particular method or form of procedure for effecting service, *or a particular place at which, or to which,* service may be effected, then there must be strict compliance with those provisions, and the court would set aside a judgment obtained by default where the requirements have not been complied with. (Emphasis added.)

[29] On that closing note I have no compunction in allowing this appeal with costs and accordingly set aside the subordinate court's order.

Appeal allowed with costs.

Reported by Andrew Christopher Simon